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on civil and
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HUMAN RIGHTS COMMITTEE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT

Initial reports of States parties due in 1991

Addendum

MALTA

[18 May 1993]

PART I

GENERAL

1. The International Covenant on Civil and Political Rights entered into force for Malta on 13 December 1990. However, the Covenant did not create a new situation because many of the rights mentioned in tne Covenant were already incorporated in the Constitution and in Act XIV of 1987, which Act made the European Convention on Human Rights part of the law of Malta.

2. The Constitution of Malta has a whole chapter dedicated to the fundamental rights and freedoms. This is chapter IV, sections 32 to 47. These sections give the individual the following rights:

Protection of the right to life (sect. 33);

Protection from arbitrary arrest or detention (sect. 34);

Protection from forced labour (sect. 35);

Protection from inhuman treatment (sect. 36);

Protection from deprivation of property without compensation (sect. 37);

Protection for privacy of the home or other property (sect. 38);

Protection of law, that is, the right to a fair trial (sect. 39);

Protection of freedom of conscience and worship (sect. 40);

Protection of freedom of expression (sect. 41);

Protection of freedom of assembly and association (sect. 42);

Protection of deportation (sect. 43);

Protection of freedom of movement (sect. 44);

Protection from discrimination (sect. 45).

3. Act XIV of 1987 makes provision for the substantive articles of the European Convention for the Protection of Human Rights, and Fundamental Freedoms, to become and be enforceable as, part of the law of Malta. The first schedule covers articles 2 to 18 of the Convention and articles 1 to 3 of the first protocol of the European Convention. The second schedule lists Malta's reservation and a declaration made by Malta when signing the protocol (see doc. 2*).

4. Article 46 of the Constitution of Malta and article 4 of Act No. XIV of 1987 outline the procedure for the enforcement of human rights and fundamental freedoms. The Civil Court, First Hall, has original jurisdiction to hear alleged infringements of human rights and should any allegation arise in any other court (with the exception of the Constitutional Court), the matter has to be referred to the First Hall of the Civil Court.

5. The set up of the courts in Malta is set out in document 3*. The independence of the judges is ensured by security of tenure (see, sect. 97*).

6. Should the individual wish to press his case beyond the Constitutional Court, then he can file an application in Strasbourg or else refer the matter to the Human Rights Committee as Malta has signed both the right to individual petition and the Optional Protocol to the International Covenant on Civil and Political Rights. When ratifying the Optional Protocol, Malta made two reservations which are reproduced hereunder for ease of reference:

(i) "Malta ratifies the Optional Protocol to the International Covenant on Civil and Political Rights, on the understanding that the provisions of Article 5, paragraph 2, of the Protocol mean that the Committee established by Article 28 of the Covenant shall not

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* See attached list of documents available for consultation in the files of the United Nations Centre for Human Rights.

consider any communication from an individual unless it has ascertained that the same matter is not being examined or has not already been examined under another procedure of international investigation or settlement."

(ii) "The Government of Malta interprets Article 1 of the Protocol as giving the Committee the competence to receive and consider communications from individuals subject to the jurisdiction of Malta who claim to be victims of a violation by Malta of any of the rights set forth in the Covenant which results either from acts, missions, developments or events occurring after the date in which the Protocol enters into force for Malta; or from a decision relating to acts, missions, developments or events after that date."

7. At the time of writing this report a number of individuals have filed applications in Strasbourg claiming to be victims of violations of human rights. The case Demicoli versus Malta, which dealt with parliamentary proceedings for breach of privilege was decided by the European Court of Human Rights during 1991 (see doc. 4*) while another interesting case concerning the opposition of a natural father to the adoption of a daughter whom he had acknowledged as his was declared inadmissible by the Commission (see, doc. 5*).

8. The provisions of the Covenant may not be invoked or be directly enforced by the Courts but they can indirectly be enforced by the Courts to the extent that they are subsumed in comparable provisions of the Constitution and Act XIV of 1987.

PART II

INFORMATION IN RELATION TO EACH OF THE ARTICLES IN PARTS I, II AND III OF THE COVENANT

Article 1

9. Section I of the Constitution of Malta reads as follows:

"1. (1) Malta is a democratic republic founded on work and on respect for the fundamental rights and freedoms of the individual.

(2) The territories of Malta consist of those territories comprised in Malta immediately before the appointed day, including the territorial waters thereof, or of such territories and waters as Parliament may from time to time by law determine.

(3) Malta is a neutral State actively pursuing peace, security and social progress among all nations by adhering to a policy of non-alignment and refusing to participate in any military alliance. Such a status will, in particular, imply that:

(a) No foreign military base will be permitted on Maltese territory;

(b) No military facilities in Malta will be allowed to be used by any foreign forces except at the request of the Government of Malta, and only in the following cases:

(i) In the exercise of the inherent right of self-defence in the event of any armed violation of the area over which the Republic of Malta has sovereignty, or in pursuance of measures or actions decided by the Security Council of the United Nations; or

(ii) Whenever there exists a threat to the sovereignty, independence, neutrality, unity or territorial integrity of the Republic of Malta.

(c) Except as aforesaid, no other facilities in Malta will be allowed to be used in such manner or extent as will amount to the presence in Malta of a concentration of foreign forces;

(d) Except as aforesaid, no foreign military personnel will be allowed on Maltese territory, other than military personnel performing, or assisting in the performance of, civil works or activities, and other than a reasonable number of military technical personnel assisting in the defence of the Republic of Malta;

(e) The shipyards of the Republic of Malta will be used for civil commercial purposes, but may also be used, within reasonable limits of time and quantity, for the repair of military vessels which have been put in a state of non-combat or for the construction of vessels; and in

accordance with the principles of non-alignment the said shipyards will be denied to the military vessels of the two superpowers."

Article 2

10. Section 45 of the Constitution of Malta provides protection from discrimination on grounds of race, place or origin, political opinions, colour, creed and sex, whereas article 14 of the European Convention on Human Rights also secures the rights and freedoms set forth in the Convention against any form of discrimination.

11. Paragraph 3 (a) of the same article of the Covenant is adequately provided for by paragraph (2) of Article 45 of the Constitution, particularly by the words "or in the performance of the functions of any public office or any public authority".

12. As to subparagraph (c) of paragraph 3 of article 2, the Government of Malta submits that Court awards have always been honoured.

Article 3

13. Most obstacles to the achievement for equal opportunities for women have been removed and both males and females are entitled to the enjoyment of the human rights set forth in the Covenant. Further comments appear under article 26.

Article 4

14. Section 47 (2) of the Constitution defines a "period of public emergency" as any period during which Malta is engaged in war and there is in force a proclamation by the President declaring that a state of public emergency exists and there is in force a resolution of all the House of Representatives supported by the votes of not less than two thirds of the Members of the House declaring that democratic institutions in Malta are threatened by subversion.

15. The declaration of a state of emergency, however, in no way affects the fundamental constitutional guarantees enjoyed by ordinary citizens and does not entail any change in the functioning of criminal justice. Members of a disciplinary force still enjoy the right to life, protection from forced labour and protection from inhuman treatment during periods of public emergency.

16. Malta is also bound to observe the provision of article 15 of the European Convention on Human Rights (see schedule 1 of Act XIV).

Article 5

17. Act XIV of 1987 has incorporated article 17 of the European Convention on Human Rights and this is substantially the same as article 5.

Article 6

18. This right is protected by article 33 of the Constitution of Malta and by article 2 of the first schedule of Act XIV of 1987.

19. Malta has abolished the death penalty for all citizens in time of peace. In time of war the death penalty may only be carried out on members of the Armed Forces in very limited circumstances.

20. Malta has also signed the Sixth Protocol of the European Convention on Human Rights.

Article 7

21. This right is protected by article 36 of Act XIV of 1987. Maltese constitutional case law has extended the meaning of inhuman or degrading treatment to psychological harassment.

22. Malta has ratified both the European Convention on Torture and the United Nations Convention against Torture and is also a party to the Geneva Conventions of 1949 and the 1977 Additional Protocols I and II.

23. The Criminal Code has a specific provision against torture committed by persons in authority (doc. 6*).

Article 8

24. As regards paragraphs 1 and 2 of this article, it is fair to say that these provisions no longer have any practical significance for Malta today.

25. As regards paragraph 3, this corresponds exactly with section 35 of the Constitution of Malta and with article 4 of the European Convention on Human Rights (first schedule of Act XIV of 1987*).

26. The White Slave Traffic (Suppression) Ordinance (Chapter 63) of the Laws of Malta contains specific provisions against persons who try to induce women or girls to engage themselves in prostitution (doc. 10*).

Article 9

27. Protection from arbitrary arrest or detention is provided by section 34 of the Constitution of Malta and by article 5 of the European Convention on Human Rights (first schedule of Act XIV of 1987). The powers of arrest of the police are also clearly laid down in sections 348 and 349 of the Criminal Code:

> "348. (1) Nevertheless, in the cases of contraventions, or of crimes not subject to the punishments laid down in the last preceding section, excepting always the crimes punishable under the Press Act, 1974, it shall be lawful for the Executive Police to proceed to the arrest of any person, provided that

"(a) The person be detected in the very act of committing the offence; and

"(b) The arrest be necessary to prevent the commission of an offence in respect of which the Police may institute criminal proceedings without the complaint of the injured party.

"(2) A person shall be deemed to be detected in the very act of committing an offence, if he is caught, either in the act of committing the offence, or while being pursued by the injured party or by the public hue and cry.

"349. Every officer of the Executive Police may also proceed to the arrest of a person who knowingly, or after due warning obstructs or disturbs him in the execution of his duties, or disobeys his lawful orders."

28. Up to a few years ago a person charged with an offence carrying a sentence of life imprisonment was not entitled to ask for bail. A Constitutional Court decision ruled that this was in breach of article 5 of the European Convention and the old section of the law has now been substituted by a new one which lays down certain criteria the courts have to follow in granting bail. The code now also provides time-limits after which bail must be granted. An arrested person has to be brought before a magistrate within 48 hours of his arrest. This right is given by the Constitution and by section 353 (2) of the Criminal Code:

"(2) Where an order is given for the person arrested to be brought before the Court of Judicial Police, such order shall be carried into effect without any undue delay and shall in no case be deferred beyond forty-eight hours."

Article 10

29. According to article 6 of the Prisons Act (chap. 260 of the Laws of Malta (doc. 7*)) the Minister responsible for prisons may by regulations provide for:

"(c) the diet, clothing, maintenance, discipline, instruction, employment and correction of prisoners, including the work prisoners may be required to perform by way of discipline, instruction or employment."

30. Moreover, section 8 of the same Act establishes a board of visitors to whom complaints can be addressed and by the same section it shall be lawful for the Minister responsible for justice, the Chief Justice, the judges, the magistrates and the Attorney General to have access to the prisoners for the purpose of inspecting some prisons and any of the prisoners therein.

31. At present, prison regulations are being thoroughly overhauled as these date to 1931 and have to be updated.

Article 11

32. Imprisonment for debt, formerly possible under the Code of Organisation and Civil Procedure, has now been abolished. It was in any case very rarely resorted to.

Article 12

33. In Malta's view, this provision, by its use of the word "lawfully", refers to the existing legislation regarding immigration (chap. 217 of the Laws of Malta). An alien permitted under Maltese law to reside temporarily in Malta cannot, therefore, derive the right to residence for an indeterminate period. According to the Immigration Act it is possible to obtain a residence permit. In fact, section 7 of the Act states as follows:

> "The Minister responsible for immigration may issue, subject to such conditions as he may deem proper to establish, a residence permit to any person who makes an application for retirement, settlement or an indefinite stay in Malta."

34. In any case section 44 of the Constitution of Malta protects the freedom of movement of all Maltese citizens, while as far as foreigners are concerned any restriction of such freedom has to be laid down by law and must be reasonably required in the interests of defence, public safety, public order, public morality or decency or public health and except so far as that provision, or as the case may be, the thing done under the authority thereof, is shown not to be reasonably justifiable in a democratic society.

Article 13

35. Malta has made the following reservation to this article:

> "The Government of Malta endorses the principles laid down in article 13. However, in the present circumstances it cannot comply entirely with the provisions of this article."

At present, the state of the law does not specifically provide for a review of an expulsion order.

Article 14

36. The first sentence of this article ensures equal treatment before the courts and tribunals. Ordinary criminal law recognizes no special authorities with criminal jurisdiction over certain persons or groups, while in civil cases even government pleads before and submits itself to the ordinary courts.

37. Most of this article is identical with article 6 (i) of the European Convention on Human Rights which is part of the law of Malta through Act XIV of 1987 and also corresponds to article 39 of the Constitution of Malta. Moreover, the Criminal Code itself ensures the equality of arms required by this article as well as the right of the accused to remain silent, to be present for the trial, to have legal assistance, to examine and cross-examine witnesses, and to have the assistance of an interpreter, and the right to

appeal and not to be tried twice for the same offence. The last right is also secured by the provisions of the Extradition Act (chap. 276 of the Laws of Malta).

38. The most celebrated case in connection with this article was the case of a journalist who wrote a humorous article about two politicians. The journalist was brought before Parliament and fined LM250. The journalist took his case to the Strasbourg Organs which ruled that (a) the journalist was facing a criminal charge and that (b) there was, therefore, a breach of article 6 (i) of the European Convention on Human Rights because Parliament could not be an independent and impartial tribunal. The Government is now preparing amendments to the House of Representatives (Privileges and Powers) Ordinance (chap. 113 of the Laws of Malta).

39. As to paragraph 3 of article 14, the Government of Malta has made the following reservation:

> "The Government of Malta declares that it interprets paragraph 2 of article 14 of the Covenant in the sense that it does not preclude any particular law from imposing upon any person charged under such law the burden of proving particular facts."

This is actually the same reservation Malta made to article 6 (2) of the European Convention.

40. As to article 14, paragraph 6, the Government of Malta made the following reservation:

> "While the Government of Malta accepts the principle of compensation for wrongful imprisonment, it is not possible at this time to implement such a principle in accordance with article 14, paragraph 6, of the Covenant on Civil and Political Rights."

However, as Government is contemplating ratifying further protocols to the European Convention and as Protocol 7 (art. 3) requires that a person be compensated for wrongful imprisonment, this reservation may be removed in the not too distant future.

Article 15

41. Section 39 (8) of the Constitution of Malta provides the guarantees of nullum crimen sine lege, while article 7 of the European Convention on Human Rights (see first schedule of Act XIV of 1987) also gives the same guarantee). In the event that the legislation is arranged after the time when the offence was committed, however, the provisions most favourable to the accused are applied.

Article 16

42. The Maltese legal system is based on the principle that every individual is a subject under the law and is entitled to exercise rights and enter into

obligation. In Malta's view this article is not an impediment to the imposition of restrictions on the powers of action of minors and mentally ill persons.

Article 17

43. The right to privacy and family life is protected under the Commission in article 32 (para. C) and article 38 and also by the first schedule of Act XIV of 1987 (art. 8). The Criminal Code restricts the powers of the Executive Police as can be shown in the following sections.

"Power of Executive Police to enter houses

350 1. Saving the cases where the law provides otherwise, no officer of the Executive Police below the rank of inspector shall enter any house, building or other enclosure for the purpose of effecting any search therein or arresting any person who has committed or is suspected of having committed any offence, without an order in writing from a superior office, unless -

(a) The offence is a crime not excepted under section 347 and there is imminent danger that the said person may escape or that the corpus delicti or the means of proving the offence will be suppressed; or

(b) The person is detected in the very act of committing a crime not excepted under section 347; or

(c) The intervention of the Executive Police is necessary in order to present the commission of a crime not excepted under section 347; or

(d) The entry is necessary for the execution of any warrant or order issued by any other competent authority in the cases prescribed by law.

Definition of 'enclosure'

(2) The expression 'enclosure' does not include any plot of land enclosed by rubble walls.

Subsidiary powers of Executive Police in the execution warrants of arrest or search

351 In cases where an officer of the Executive Police is empowered to enter into any of the places mentioned in the last preceding section, it shall be lawful for such officer to open or break any door or window, if, after giving notice of his office and object he cannot otherwise obtain entry.

Duty of Executive Police in the execution of warrants of arrest of search or search person

352 The officer of the Executive Police employed in the execution of any arrest or search, unless he shall inform the person subject to such arrest or search if present, of his authority and of the reason for the arrest or search, unless he shall have detected such in the very act of committing the offence."

44. Of course, other laws do give powers to certain officers to search premises. For example, under Customs Assistance (chap. 37 of the Laws of Malta) customs officers may search premises by warrant granted by the Attorney General or magistrate on reasonable cause shown (sect. 71) while under the Official Secrets Ordinance (chap. 50 of the Laws of Malta) if a magistrate is satisfied by information on oath that there is reasonable ground for suspecting that an offence under the Ordinance has been or is about to be committed, he may grant a search warrant authorizing any police officer named therein to enter at any time any premises or place named in the warrant. But all this is far from arbitrary, is necessary in a democratic society and is according to law.

45. The secrecy of the mail is protected by section 55 of the Post Office Act (chap. 254 of the Laws of Malta) while telephone tapping under the Constitution takes place under the authority of a law. A law is at present being drafted to regulate interception of communication by the police.

Article 18

46. While according to section 2 of the Constitution of Malta, the Roman Catholic Apostolic Religion is the religion of Malta, section 40 of the Constitution and article 9 of the first schedule of Act XIV of 1987 provide the protection required by article 18 of the Covenant on Civil and Political Rights. The recent Church-State Comprehensive Agreement also brought to an end the old legal situation by which religious entities were not allowed to hold any immovable property.

47. There is no form of compulsory military service in Malta and hence the need for a law recognizing and regulating conscientious objection in the circumstances does not arise.

Article 19

48. Freedom of expression is protected by section 41 of the Constitution and article 18 of the first schedule of Act XIV of 1987. A leading constitutional case, namely Francis Zammit Dimech v. Commissioner of Police, established that the failure of the Commissioner to issue a permit to a group of students to hold a demonstration was a breach of this article. There is also a case pending in court (filed by a political movement) which deals with the right to be given a radio licence. The group is alleging that failure to grant a licence goes against this right.

49. In the Censu Galea and Carmel Cacopardo cases the Constitutional Court ruled that this rule may not be applied in a discriminatory manner.

50. It will be recalled that when ratifying the Covenant on Civil and Political Rights, Malta made the following reservations:

> "The Government of Malta, desiring to avoid any uncertainty as regards the application of article 19 of the Covenant declares that the Constitution of Malta allows such restrictions to be imposed upon public officers in regard to their freedom of expression as are reasonably justifiable in a democratic society. The code of conduct of public officers in Malta precludes them from taking an active part in political discussions or other political activity during working hours or on the premises."

> "The Government of Malta also reserves the right not to apply article 19 to the extent that this may not be fully compatible with Act I of 1987 entitled 'An Act to regulate the limitations on the political activities of aliens', and this in accordance with article 16 of the Convention of Rome (1950) for the Protection of fundamental rights and freedoms."

51. In 1991, a very liberal Broadcasting Act was passed by Parliament and a number of political and commercial stations has gone on the air. Moreover, civil servants in certain ranks were allowed to contest the last general elections with a guarantee of continuity of service if unsuccessful at the polls.

Article 20

52. The Government of Malta made no reservation regarding this article in the sense that it interprets article 20 consistently with the rights confessed by articles 19 and 21 of the Covenant but reserves the right to introduce any legislation for the purposes of article 20.

53. As to racial, national or religious discrimination, article 45 of the Constitution provides enough security against any form of intolerance.

Article 21

54. Article 42 of the Constitution of Malta and article 11 of the European Convention on Human Rights give the protection required by article 21. According to the Public Meetings Ordinance (chap. 68 of the Laws of Malta) one requires a permit by the Commissioner of Police to hold a meeting. No such notification is necessary in the case of demonstrations. However, it is proposed to amend the law in such manner that while spontaneous demonstrations will not be prohibited notification of organized demonstrations will be required.

Article 22

55. The right to join a trade union is guaranteed by article 42 of the Constitution, article 11 of the first schedule of Act XIV of 1987 and the Industrial Relations Act of 1976 (chap. 266 of the Laws of Malta (doc. 8)).

According to the same Act, however, the Government may restrict union membership of certain public officers. In fact, section 21 of this Act reads as follows:

"21. (1) The holder of an office in the public service declared by the Prime Minister, after consultation with the bodies referred to in subsection (2) of section 25 of this Act, to be an office the holder whereof may not be a member of a trade union in respect of which he may be required to represent or advise the Government, shall not become, and if he is shall cease to be, a member of that trade union; and the provisions of this subsection shall be an implied term of his terms of service with the Government.

(2) Subject to the provisions of subsection (3) of this section, in respect of a person employed in such managerial or executive post, in any corporation or other body established by law or in any company or other partnership or in any other body having a distinct legal personality (hereinafter referred to as a "corporate employer"), as will require the holder of that position to represent or advise the corporate employer in its relations with the union or unions representing its other employees or any part thereof, it shall be an implied term of the contract of employment of such person that he shall not, while occupying such position, be a member of any of the trade unions aforesaid.

(3) Subsection (2) of this section shall apply only to such posts, being not more than three in respect of any one corporate employer, as such employer shall have indicated in writing to the trade union of which the holder of the said posts may not be a member."

56. Section 25 provides for the setting up of a joint negotiating council to deal with the conditions of service of public officers. Eight members of this Council represent the Government.

57. This explains the Government of Malta's reservation to this article:

"The Government of Malta reserves the right not to apply article 22 to the extent that existing legislative measures may not be fully compatible with this article:"

Article 23

58. Maltese law on the family is set out in the Civil Code and in chapter 255 of the Laws of Malta. The only restrictions on marriage are the following:

"Restrictions on marriage

3. A marriage contracted between persons either of whom is under the age of sixteen shall be void.

4. A marriage contracted between persons either of whom is incapable of contracting by reason of infirmity of mind, whether interdicted or not, shall be void.

5. A marriage contracted between:

(a) An ascendant and a descendant in the direct line;

(b) A brother and a sister, whether of the full or half blood;

(c) Persons related by affinity in the direct line; or

(d) The adopter and the adopted person or a descendant, or the husband or wife, of the adopted person,

shall, whether the relationship aforesaid derives from legitimate or illegitimate descent, be void.

6. A marriage contracted between persons either of whom is bound by a previous marriage shall be void."

59. A marriage may be contracted either in a civil form or in a religious form. There is no law which regulates divorce in Malta but a decision of a foreign court on the status of a named person or affecting such status be recognised for all purposes of law in Malta if the decision is given by a competent court in which either of the parties to the proceedings is domiciled or of which either of such parties is a citizen.

60. A marriage may be declared null by the Civil Courts in Malta in the following cases:

"19. (1) In addition to the cases in which a marriage is void in accordance with any other provision of this Act, a marriage shall be void.

(a) If the consent of either of the parties is extorted by violence, whether physical or moral, or fear;

(b) If the consent of either of the parties is excluded by error on the identity of the other party;

(c) If the consent of either of the parties is extorted by fraud about some quality of the other party which could of its nature seriously disrupt matrimonial life;

(d) If the consent of either of the parties is vitiated by a serious defect of discretion of judgement on the matrimonial life, or on its essential rights and duties, or by a serious psychological anomaly which makes it impossible for the party to fulfil the essential obligations of marriage;

(e) If either of the parties is impotent, whether such impotence is absolute or relative, but only of such impotence is antecedent to the marriage;

(f) If the consent of either of the parties is vitiated by the positive exclusion of marriage itself, or of any one or more of the essential elements of matrimonial life, or of the right to the conjugal act;

(g) If either of the parties subjects his or her consent to a condition referring to the future;

(h) If either of the parties, although not interdicted or infirm of mind, did not have at the time of contracting marriage, even on account of a transient cause, sufficient powers of intellect or volition to elicit matrimonial consent.

(2) Subject to the provisions of this Act, an action for the annulment of a marriage may only be commenced by one of the parties to that marriage, and this provision shall apply even where such party is, under any provision of law, incapable of suing or being sued, and in any such case the action may be commenced by such party notwithstanding such incapacity, saving any assistance or other condition the court may deem appropriate to order. Where an action has been commenced by a party to a marriage the action may be continued by any of his heirs."

61. The obligations of the spouses towards each other are governed by sections 2 to 66 of the Civil Code. However, the Government of Malta has already published a white paper outlining the changes it intends to effect in this field. The amendments being contemplated in this field aim at ensuring complete equality between the spouses.

62. In the case of dissolution of marriage, the following provisions prevail:

"20. (1) If a marriage is declared to be void the effects of a valid marriage shall be deemed to have existed in favour of the spouses until the judgement of nullity has become a res judicata when both spouses had contracted the marriage in good faith.

(2) The effects of a valid marriage shall be deemed to have always existed with reference to the children born or conceived during a marriage declared to be void, as well as with reference to children born before such marriage and acknowledged before the judgement declaring the nullity.

(3) If only one of the spouses was in good faith such effects shall apply in his or her favour and in favour of the children.

(4) If both spouses were in bad faith the effects of a valid marriage shall apply only in favour of the children born or conceived during the marriage declared to be void.

(5) Notwithstanding any other provision, the spouse who was responsible for the nullity of the marriage is bound to pay maintenance to the other spouse in good faith, for a period of five years, which duty shall cease if the party in good faith marries during such period."

Article 24

63. In principle all children born or conceived in wedlock are legitimate and all others are illegitimate. In the case of legitimate children the law requires full legal relations with both parents. An illegitimate child may be acknowledged by the father and the mother, either jointly or separately.

64. Illegitimate children may also be legitimated. The father is vested with paternal authority over the child. (This legal situation is also going to be revised). In certain circumstances defined by law the father may be deprived of his paternal authority. Adoption confers a new status on the child, who is to be treated in law as if he were not the child of any person other than the adopter.

65. Special criminal provisions concerning minors ensure reasonable decreases in the degree of punishments owing to their tender years.

66. Registration of births is compulsory in accordance with sections 276 to 292 of the Civil Code.

67. Citizenship is regulated by chapter III of the Constitution of Malta and the Maltese Citizenships Act (chap. 188 of the Laws of Malta).

68. A recent amendment to section 25 of the Constitution further extended citizenship possibilities to a number of persons. For ease of reference the section is reproduced hereunder:

> "25. (1) Every person born in Malta on or after the appointed day shall become a citizen of Malta at the date of his birth:
>
> Provided that in the case of a person born on or before the 31 July 1989, such person shall not become a citizen of Malta by virtue of this subsection if at the time of his birth:
>
> (a) Neither of his parents was a citizen of Malta and his father possessed such immunity from suit and legal process as is accorded to an envoy of a foreign sovereign power accredited to Malta; or
>
> (b) His father was an enemy alien and the birth occurred in a place then under occupation by the enemy.
>
> Provided further that in the case of a person born on or after 1 August 1989 such person shall not become a citizen of Malta by virtue of this subsection unless at the time of his birth his father or his mother is:
>
> (a) A citizen of Malta; or
>
> (b) A person referred to in paragraphs (a) or (b) of subsection (4) of section 44 of the Constitution.
>
> (2) A person born outside Malta on or after the appointed day shall become a citizen of Malta at the date of his birth:

(a) In the case of a person born on or before 31 July 1989, if at the date of such person's birth, his father is a citizen of Malta otherwise than by virtue of this subsection or subsection (2) of section 22 of this Constitution; and

(b) In the case of a person born on or after 1 August 1989, if at the date of such person's birth his father or his mother is a citizen of Malta otherwise than by virtue of this subsection or subsection (2) of section 22 of this Constitution."

Article 25

69. Provisions on the right to vote and the right to be elected are contained in the Constitution and the General Elections Act (1991). The qualifications for election to the House of Representatives are the following:

"57. Subject to the provisions of section 58 of this Constitution, a person shall be qualified to be registered as a voter for the election of members of the House of Representatives, if, and shall not be qualified to be so registered unless:

(a) He is a citizen of Malta;

(b) He has attained the age of eighteen years; and

(c) He is a resident in Malta and has during the eighteen months immediately preceding his registration been a resident for a continuous period of six months or for periods amounting in the aggregate to six months:

Provided that this paragraph shall not apply to a person who is ordinarily resident in Malta but has not been resident in Malta as required by this paragraph by reason of service abroad in the public service, including service in the offices referred to in subsection (3) of section 124 of this Constitution or by reason of service abroad in, or as a member of, a disciplined force as defined in section 47 of this Constitution.

"58. No person shall be qualified to be registered as a voter for the election of members of the House of Representatives if:

(a) He is interdicted or incapacitated for any mental infirmity by a court in Malta or is otherwise determined in Malta to be of unsound mind;

(b) He is under sentence of death imposed on him by any court in Malta or is serving a sentence of imprisonment (by whatever name called) exceeding twelve months imposed on him by such a court or substituted by competent authority for some other sentence imposed on him by such a court, or is under such a sentence of imprisonment the execution of which has been suspended; or

(c) He is disqualified for registration as a voter by or under any law for the time being in force in Malta by reason of his having been convicted of any offence connected with the election of members of the House of Representatives.

A person shall be qualified for membership of the House of Representatives if he satisfies sections 53 and 54 of the Constitution.

"53. Subject to the provisions of section 54 of this Constitution, a person shall be qualified to be elected as a member of the House of Representatives if, and shall not be qualified to be so elected unless, he has the qualifications for registration as a voter for the election of members of the House of Representatives mentioned in section 57 of this Constitution.

"54. (1) No person shall be qualified to be elected as a member of the House of Representatives:

(a) If he is a citizen of a country other than Malta having become such a citizen voluntarily or under a declaration of allegiance to such a country;

(b) Save as otherwise provided by Parliament, if he holds or is acting in any public office or is a member of the armed forces of the Government of Malta;

(c) If he is a party to, or is a partner with unlimited liability in a partnership or a director or manager of a company which is a party to, a contract with the Government of Malta being contracted of works or a contract for the supply of merchandise to be used in the service of the public and has not, within one month before the date of election, published in the Gazette a notice setting out the nature of any such contract, and his interest, or the interest of any such partnership or company, therein;

(d) If he is an undischarged bankrupt, having been adjudged or otherwise declared bankrupt under any law in force in Malta;

(e) If he is interdicted or incapacitated for any mental infirmity or for prodigality by a court in Malta, or is otherwise determined in Malta to be of unsound mind;

(f) If he is under sentence of death imposed on him by any court in Malta or is serving a sentence of imprisonment (by whatever name called), exceeding twelve months imposed on him by such a court or substituted by competent authority for some other sentence imposed on him by such a court, or is under such a sentence of imprisonment the execution of which has been suspended;

(g) If he holds or is acting in any office the functions of which involve any responsibility for or in connection with, the conduct of any election of members of the House of Representatives or the compilation or revision of any electoral register;

(h) If he is disqualified for membership of the House of Representatives by or under any law for the time being in force in Malta by reason of his having been convicted of any offence connected with the election of members of the House of Representatives.

(2) For the purposes of paragraph (f) of subsection (1) of this section:

(a) Two or more sentences that are required to be served consecutively shall be regarded as separate sentences if none of them exceeds twelve months, but if any one of them exceeds that term they shall be regarded as one sentence; and

(b) No account shall be taken of a sentence of imprisonment imposed as an alternative to, or in default of, the payment of a fine.

(3) A person shall not be treated as holding, or acting in a public office for the purpose of paragraph (b) of subsection (1) of this section:

(a) If he is on leave of absence pending relinquishment of a public office;

(b) If he is a teacher at the University of Malta who is not by the terms of his employment prevented from the private practice of his profession or called upon to place his whole time at the disposal of the Government of Malta."

70. According to the Constitution of Malta, elections for the House of Representatives are to be held every five years and voting must be by secret ballot. The proportional representation system is used in Malta.

71. The public service is open to everybody without distinction and entry into the service is regulated by the Public Service Commission. Chapter X of the Constitution of Malta deals with the composition of the Public Service Commission and its functions. The Public Service Commission is also responsible for the discipline of civil servants.

Article 26

72. Subsection (1) and (2) of section 45 of the Constitution of Malta read as follows:

"(1) Subject to the provisions of subsections (4), (5) and (7) of this section, no law shall make any provision that is discriminatory either of itself or in its effect.

"(2) Subject to the provisions of subsections (6), (7) and (8) of this section, no person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the functions of any public office or any public authority."

73. The words of these two subsections are clear enough and need no elaborate interpretation by the courts. In fact, the Constitutional Court has held that the prohibition to discriminate against any person extends to any person, particularly in the case of companies where the State is the majority shareholder. For the record, a number of persons have successfully challenged administrative decisions on the ground of discrimination.

74. The way article 26 of the Covenant is worded shows that the list is not an exhaustive one because of the two words "such as". The constitutional provision, however, is an exhaustive one because the list of grounds is not preceded by the words "such as". On the other hand, in Act XIV of 1982, article 14 of the European Convention on Human Rights (see the first schedule) also includes the words "such as" and this means that the rights enunciated in the Convention are to be enjoyed indiscriminately, not only on the grounds specified in the article but also on any other ground.

75. As regards sex discrimination, the Government has undertaken to amend the laws which discriminate against women. In 1991, section 45 of the Constitution was amended as follows:

> "(10) Until the expiration of a period of two years commencing on 1 July 1991, nothing contained in any law made before 1 July 1991 shall be held to be inconsistent with the provisions of this section, in so far as that law provides for different treatment to different persons attributable wholly or mainly to their respective description by sex.
>
> "(11) Nothing in the provisions of this section shall apply to any law or anything done under the authority of a law, or to any procedure or arrangement, in so far as such law, thing done, procedure or arrangement provides for the taking of special measures aimed at accelerating de facto equality between men and women, and in so far only as such measures, taking into account the social fabric of Malta, are shown to be reasonably justifiable in a democratic society."

76. The new subsection (10) ensures that as from 1 July 1993 (whether all the laws have been amended or not) any law which discriminates against women will no longer be applicable as far as it discriminates against females. Subsection (11) makes it possible to accelerate the procedures to ensure equality between men and women. The Government has also published a white paper giving out the details of the proposed amendments to the Civil Code that women can be given the same rights as men in the administration of the community of acquests and in the duties and rights arising from marriage. Moreover, equal pay for men and women was introduced in 1967 for government employees and it was then extended to employees in the private sector. As to tax legislation, recent amendments make it possible for a married couple to opt for separate assessments in cases where the wife is also working.

77. In 1991, Malta ratified the Convention on the Elimination of All Forms of Discrimination against Women and, as has already been said, is now working hard to abide by these international obligations.

78. As to discrimination on grounds of birth, a more comprehensive review of the Civil Code is being undertaken to eliminate any forms of discrimination against illegitimate children, particularly in the law of succession.

Article 27

79. In Malta no minorities exist and though no specific article about their rights exists in the Constitution, article 45 should provide protection if the need ever arises. In any case, as far as religious practice is concerned, this is protected by section 40 of the Constitution and by article 9 of the first schedule of Act XIV of 1987.

LIST OF DOCUMENTS**

1. Chapter IV of the Constitution of Malta

2. Act XIV of 1987

3. Chapter VIII of the Constitution of Malta

4. Demicoli v. Malta

5. X v. Malta: Commission Division

6. Criminal Code: Section 139

7. Chapter 260 of the Laws of Malta in the Prisons Act

8. The Industrial Relations Act, 1976 (chap. 266)

9. Chapter X of the Constitution of Malta

10. White Slave Traffic (Suppression) Ordinance (chap. 63).

** These documents are available for consultation in the files of the United Nations Centre for Human Rights.